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REACH MEDIA GROUP, LLC

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 DAVID TRINDADE, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 REACH MEDIA GROUP, LLC, a  
19 Delaware limited liability company,

20 Defendant.

21 REACH MEDIA GROUP, LLC, a  
22 Delaware limited liability company,

23 Third-Party Plaintiff,

24 v.

25 RYAN LENAHAAN, individually, KYLE  
DANNA, individually, and EAGLE WEB  
ASSETS INC., a corporation,

26 Third-Party Defendants.  
27  
28

CASE NO 5:12-CV-04759 (PSG)

(Complaint Filed: September 12, 2012)

**CLASS ACTION**

**DECLARATION OF VISHALI SINGAL IN  
SUPPORT OF OPPOSITION TO THIRD  
PARTY DEFENDANT RYAN LENAHAAN'S  
MOTION TO STRIKE CLAIMS UNDER  
CAL. CIV. PROC. CODE §425.16 (ANTI-  
SLAPP MOTION)**

DATE: MARCH 12, 2013  
TIME: 10:00 a.m.  
DEPT: COURTROOM 5, 4TH FLOOR  
JUDGE: HON. PAUL SINGH GREWAL

DECLARATION OF VISHALI SINGAL ISO OPPOSITION TO MOTION TO STRIKE  
CLAIMS UNDER CAL. CODE CIV. PROC. § 425.16 (ANTI-SLAPP MOTION)  
CASE NO. 5:12-CV-04759 (PSG)

1 I, VISHALI SINGAL, hereby declare as follows:

2 1. I am an attorney admitted to practice law in the State of California and authorized  
3 to practice before this Court. I am an associate with the law firm of DLA Piper LLP (US),  
4 counsel for Defendant and Third-Party Plaintiff Reach Media Group, LLC. I have personal  
5 knowledge of the matters contained herein and, if called as a witness, I could and would  
6 competently testify to the following.

7 2. Attached hereto as Exhibit A is a true and correct copy of a proposed amended  
8 Third-Party Complaint to assert allegations in support of Counts IV and V as to Third-Party  
9 Defendant Ryan Lenahan.

10 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
11 knowledge and that this Declaration is executed on February 1, 2013, at San Francisco,  
12 California.

13   
14 VISHALI SINGAL

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID TRINDADE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

REACH MEDIA GROUP, LLC, a  
Delaware limited liability company,

Defendant.

REACH MEDIA GROUP, LLC, a  
Delaware limited liability company,

Third-Party Plaintiff,

v.

RYAN LENAIIAN, individually, KYLE  
DANNA, individually, and EAGLE WEB  
ASSETS INC., a corporation,

Third-Party Defendants.

CASE NO 5:12-CV-04759 (PSG)

(Complaint Filed: September 12, 2012)

**AMENDED THIRD-PARTY COMPLAINT  
OF REACH MEDIA GROUP, LLC FOR:**

**1) BREACH OF WARRANTY**

**2) BREACH OF CONTRACT**

**3) LIBEL PER SE**

**4) TORTUOUS INTERFERENCE WITH  
CONTRACTUAL RELATIONS**

**5) TORTUOUS INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
ADVANTAGE**

**DEMAND FOR JURY TRIAL**



1 **THIRD-PARTY COMPLAINT**

2 Third-Party Defendant REACH MEDIA GROUP, LLC, a Delaware limited liability  
3 company ("RMG"), for its Third-Party Complaint against RYAN LENAHAAN, individually,  
4 KYLE DANNA, individually, and EAGLE WEB ASSETS INC., a corporation organized and  
5 existing under the laws of Illinois (collectively, "Third-Party Defendants"), alleges as follows:

6 **INTRODUCTORY ALLEGATIONS**

7 1. RMG is a leading performance based publisher network that provides advertisers  
8 with a single stop solution for scaling their affiliate market solutions.

9 2. In a class action filed on September 12, 2012, Plaintiff David Trindade  
10 ("Plaintiff") sued RMG for allegedly violating the Telephone Consumer Protection Act, 47  
11 U.S.C. § 227 *et seq.* Plaintiff contends that RMG repeatedly made or directed to be made on its  
12 behalf unsolicited text message calls to cellular telephone numbers belonging to Plaintiff and the  
13 other members of the alleged Class, for the purpose of "driv[ing]e consumers to information  
14 collection websites and payday loan offers", without their prior express consent, and thus, in  
15 violation of 47 U.S.C. § 227(b)(1)(A)(iii). (Dkt. 1, ¶¶ 1-4, 39.) Among other examples, Plaintiff  
16 alleges that RMG made, or had made on its behalf, an unsolicited text message to Plaintiff's  
17 cellular phone on August 13, 2012, stating: "Lenders offering \$1,500 cash loans deposited within  
18 2hrs. NO credit checks! Get money today by applying right now directly on your phone at  
19 www.TwoHourCash.com." (Dkt. 1, ¶ 17.) Furthermore, Plaintiff contends that these text  
20 message calls caused Plaintiff and the members of the purported Class "actual harm, including the  
21 aggravation and nuisance that necessarily accompanies the receipt of unsolicited text message  
22 calls, and the monies paid to their wireless carriers for the receipt of such text message calls."  
23 (Dkt. 1, ¶¶ 1-4, 39.) RMG denies Plaintiff's claims and denies any liability for any damages  
24 alleged by Plaintiff.

25 3. As a publisher network, RMG frequently enters into agreements with advertisers  
26 or media companies ("Company"), whereby the Company purchases advertising and related  
27 services from RMG. These agreements govern the services provided by RMG, payment and the  
28 terms of payment to RMG, the representations and warranties by RMG and Company, and the

1 nature of the relationship between RMG and the Company, among other things. To become a  
2 purchaser of RMG's advertising services, a Company must execute a Marketing and Distribution  
3 Agreement.

4 4. As a publisher network, RMG frequently enters into agreements with third party  
5 publishers for the publication of advertisements. These agreements govern the content of the  
6 advertisements, the terms of payment to the third party publishers, the representations and  
7 warranties by the third party publishers, and the nature of the relationship between RMG and the  
8 third party publishers, among other things. To join RMG's publisher network, a publisher must  
9 submit an application on RMG's website, available at <http://www.reachmediagroup.com/signup>.  
10 By submitting this application, the publisher agrees to RMG's Terms and Conditions  
11 ("Agreement"), which is located on the application page and accessible for review before a  
12 publisher submits an application. Under the Agreement the publisher agrees to "display the  
13 Advertisement and perform lead generation services described in the attached Insertion Order".  
14 The publisher understands that they will be publishing advertisements for RMG's advertising  
15 campaigns benefitting both RMG and the Companies that enter into Marketing Distribution  
16 Agreements with RMG.

17 5. Within the past five months, each of the Third-Party Defendants, Ryan Lenahan  
18 ("Lenahan"), Kyle Danna ("Danna"), and Eagle Web Assets Inc. ("EWA") applied on RMG's  
19 website to join RMG's publisher network. In so doing, they agreed to the Terms and Conditions.  
20 Each of the Third-Party Defendants also agreed to Insertion Orders which specified the  
21 advertising campaigns for which they would publish advertisements specified by RMG, also  
22 called RMG's Creatives, and start and end dates for the campaigns, among other things.

23 6. RMG is informed and believes, and thereon alleges, during the time period the  
24 Third-Party Defendants published advertisements relating to Companies, that each Company had  
25 a valid existing contract with RMG.

26 7. RMG is informed and believes, and thereon alleges, Third-Party Defendants had  
27 knowledge of the existence of the contracts with these Companies during the time period they  
28 were publishing advertisements purportedly pursuant to RMG's campaigns for these Companies.

1           8.     The Agreements into which each of the Third-Party Defendants entered were  
2 identical to one another and specified that each party to them were independent contractors, not  
3 authorized or empowered to obligate the other or incur any costs on behalf of the other without  
4 the other party's prior written consent. Attached hereto as Exhibit A, and incorporated herein by  
5 this reference, is a true and correct copy of the Terms and Conditions. Additionally, the  
6 Agreements required Third-Party Defendants to display an advertisement and perform lead  
7 generation services in accordance with accompanying Insertion Orders. Furthermore, each  
8 Agreement prohibited editing to RMG's Creative without the prior written consent of RMG, and  
9 explained that any violation of this requirement would result in the loss of payment per leads.  
10 The Agreements also included a representation and warranty by each Third-Party Defendant that  
11 the Third-Party Defendant's efforts in association with the Agreement would comply with the  
12 laws of the United States, and any applicable laws of any other jurisdiction, and that the Third-  
13 Party Defendant would not engage in or promote any illegal activities of any kind in association  
14 with the Agreement.

15           9.     RMG is informed and believes, and thereon alleges, that each Third-Party  
16 Defendant breached their warranties under the Agreements by sending text messages to cellular  
17 phone numbers without the prior express consent of the called parties. Moreover, RMG is  
18 informed and believes, and thereon alleges, that Third-Party Defendants also breached the  
19 Agreements by sending text messages to cellular phone numbers that did not comply with RMG's  
20 Creatives, without receiving prior written approval from RMG.

21           10.    Third-Party Defendants Lenahan and EWA are now engaged in defamatory  
22 conduct apparently intended to smear the reputation of RMG and its President and Chief  
23 Executive Officer, Roger Dowd ("Dowd"). The damaging conduct of Third-Party Defendant  
24 Lenahan has already deteriorated RMG's relationship with one of its largest customers, and is  
25 intended to further interfere with RMG's existing and future contractual relations, as well as its  
26 prospective economic advantage.

27           11.    Under the terms of the Agreements, RMG is not liable for any damage caused by  
28 Third-Party Defendants Lenahan, Danna, and EWA, arising out of or in connection with the



1 Agreements. Moreover, the Agreements specify that under no circumstances shall RMG be liable  
2 to publishers or any third parties “for any reason.” (Ex. A, ¶ 15.) Rather, Third-Party  
3 Defendants are required to indemnify, defend and hold harmless RMG and its employees, agents,  
4 officers and directors, against claims, causes of actions, judgments, demands, damages, losses or  
5 liabilities, including costs and expenses, arising out of or relating to any breach of any  
6 representation or warranty in the Agreement, among other things. (*Id.*, ¶ 16.) Accordingly, to the  
7 extent Plaintiff or purported Class members have suffered damages in relation to text messages  
8 described in Plaintiff’s Complaint and those text messages were sent by Third-Party Defendants,  
9 Third-Party Defendants, and each of them, are the actual and proximate cause of any such  
10 damage and liable to Plaintiff for such harm, if any.

#### 11 **THE PARTIES AND JURISDICTION**

12 12. Defendant and Third-Party Plaintiff RMG is a limited liability company organized  
13 and existing under the laws of the State of Delaware. Its principal place of business is located at  
14 3715 Northside Parkway, Building 100, Suite 300, Atlanta, Georgia 30327. RMG conducts  
15 business in the State of California and in this District.

16 13. Third-Party Defendant Ryan Lenahan (“Lenahan”) is a natural person and resident  
17 of the State of California.

18 14. Third-Party Defendant Kyle Danna (“Danna”) is a natural person and resident of  
19 the State of Louisiana.

20 15. Third-Party Defendant Eagle Web Assets Inc. (“EWA”) is a corporation organized  
21 and existing under the laws of the State of Illinois. Its principal place of business is located at  
22 9933 Lawler, Suite 355, Skokie, IL 60077. EWA conducts business in the State of California and  
23 in this District.

24 16. This Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil  
25 action between citizens of different states in which the matter in controversy exceeds, exclusive  
26 of costs and interest, seventy-five thousand dollars.

#### 27 **VENUE**

28 17. Venue is proper in the Northern District of California because a substantial part of



1 the events or omissions giving rise to the claims occurred in this District.

2 **LEGAL BASIS FOR THIS THIRD-PARTY COMPLAINT**

3 18. Third-Party Defendants, and each of them, are parties to the Agreements with  
4 RMG. The Agreements contain the following indemnification provision, stated in its entirety  
5 here:

6  
7 Each party agrees to indemnify, defend and hold harmless the other party and its  
8 employees, agents, officers and directors, against any and all claims, causes of  
9 actions, judgments, demands, damages, losses or liabilities, including costs and  
10 expenses (including reasonable attorneys fees and costs of suit), arising out of or  
11 relating to (a) any claim based upon infringement of copyright, trademark, patent,  
representation, or statement made in the Advertisement; (b) any claim,  
representation, or statement made in the Advertisement; (c) **any breach of any  
representation or warranty contained in this Agreement.**

12 (Ex. A, ¶ 16) (emphasis added). Under each of the Agreements, each Third-Party Defendant  
13 represents and warrants, among other things, that the Third-Party Defendant's

14 efforts associated with this Agreement comply with the laws of the United States,  
15 and any other laws of any other jurisdictions which are applicable to  
16 PUBLISHER. PUBLISHER will not engage in or promote any illegal activities  
of any kind in association with this Agreement.

17 (Id. A, ¶ 11.) Because Third-Party Defendants represented and warranted to RMG that they  
18 would comply with all federal laws, which include the TCPA, they must indemnify and hold  
19 harmless RMG and its employees, agents, officers and directors, against claims, judgments,  
20 damages, losses or liabilities, among others, arising out of or relating to their breach of this  
21 representation and warranty, including any violations of the TCPA.

22 **GENERAL ALLEGATIONS**

23 **Publication Agreements Entered Into By and Between RMG and Third-Party Defendants**

24 19. On or around July 21, 2012, Third-Party Defendant EWA entered into an  
25 Agreement with RMG to publish RMG's Creative, specifically for the Cash Advance Diamond –  
26 WEB/WAP campaign. This Agreement required that EWA "display the Advertisement and  
27 perform lead generation services described in the attached Insertion Order." (Ex. A, ¶ 1.) The  
28 Agreement further specified that any editing of RMG's Creative was "strictly prohibited, without

1 prior written approval from Reach Media Group.” (Id., ¶ 4.) Indeed, any violation of this  
2 prohibition would result in the loss of payment per lead basis, pursuant to the Agreement. (Id.)  
3 Subsequently, on or around August 27, 2012, EWA agreed to publish advertisements pursuant to  
4 the Quick Cash Money Loan – WEB/WAP campaign, as well.

5 20. On or around August 9, 2012, Third-Party Defendant Lenahan entered into an  
6 Agreement with RMG to publish RMG’s Creatives, as well. The terms of this Agreement were  
7 identical to the terms of the Agreement entered into on RMG’s website between RMG and Third-  
8 Party Defendant EWA. The Insertion Order for Ryan Lenahan detailed eight different advertising  
9 campaigns, entitled: (1) Auto Loan Professionals, (2) Cash Advance Diamond, (3) Central  
10 Payday Advance, (4) Honest Cash Loan, (5) Huge Cash Advance, (6) Instant Cash Express, (7)  
11 Mobile Cash Source, and (8) Second Chance Cash Advance.

12 21. Finally, on or around September 4, 2012, Third-Party Defendant Danna also  
13 entered into an Agreement with RMG to publish RMG’s Creative for another advertising  
14 campaign. That campaign was entitled Homeland Cash Advance. The terms of this Agreement  
15 were identical to the terms of the Agreement to which RMG and Lenahan agreed, and the terms  
16 of the Agreement to which RMG and EWA agreed.

17 22. By entering into the Agreements with RMG, Third-Party Defendants represented  
18 and warranted that:

19 (1) the recipients of all email addresses used by PUBLISHER in connection with  
20 this Agreement have manifested affirmative consent to receive commercial emails  
21 from PUBLISHER and none of the email addresses were obtained through email  
22 harvesting or dictionary attacks; (2) PUBLISHER will not fraudulently add leads  
23 or clicks or inflate leads or clicks by fraudulent traffic generation (as determined  
24 solely by Reach Media Group, such as pre-population of forms or mechanisms  
25 not approved by Reach Media Group); (3) PUBLISHER will not attempt in any  
26 way to alter, modify, eliminate, conceal, or otherwise render inoperable or  
27 ineffective the Site tags, source codes, links, pixels, modules or other data  
28 provided by or obtained from Reach Media Group that allows Reach Media  
Group to measure ad performance and provide its services and **(4) all of  
PUBLISHER’s efforts associated with this Agreement comply with the laws  
of the United States, and any other laws of any other jurisdictions which are  
applicable to PUBLISHER. PUBLISHER will not engage in or promote any  
illegal activities of any kind in association with this Agreement.**

1 (Ex. A, ¶ 11) (emphasis added).

2 23. Furthermore, under the indemnification provision of the Agreements, each party  
3 agreed to indemnify, defend and hold harmless the other party against - in part - damages, losses  
4 or liabilities arising out of or relating to “any breach of any representation or warranty contained  
5 in this Agreement.” (Id., ¶ 16.)

6 24. Beginning some time after July 21, 2012, Roger Dowd, President and Chief  
7 Executive Officer of RMG, received a complaint from a recipient of a text message, purportedly  
8 sent on RMG’s behalf. The recipient complained that he received a text message advertisement,  
9 which provided a link that itself linked to a website owned by RMG, but that he never provided  
10 authorization to receive the text message at issue. Subsequently, Dowd received numerous other  
11 complaints from recipients of text messages sent some time after July 21, 2012 purportedly on  
12 RMG’s behalf. RMG never authorized the transmission of any of the text messages for which  
13 Dowd received complaints, including the following advertisement:

14 Chase is offering \$1500 cash loans deposited within 2hrs. NO credit checks or  
15 faxing! Get the money today by applying right now on your phone at  
16 TwoHourCash.net.

17 25. As a result of these complaints, Dowd spoke with Lenahan , notifying Lenahan  
18 that Dowd had received complaints regarding text messages purportedly sent on RMG’s behalf.  
19 Based upon information and belief, Dowd told Lenahan that the unauthorized text messages had  
20 been sent by Lenahan and that Lenahan was in breach of the Agreement because he had sent text  
21 messages on RMG’s behalf that were not in compliance with the terms of the Agreement between  
22 RMG and Lenahan. Dowd also demanded that Lenahan cease sending unlawful text messages on  
23 RMG’s behalf. Subsequent to these conversations with Lenahan, Dowd received additional  
24 complaints regarding text messages purportedly sent on RMG’s behalf. As a result, Dowd spoke  
25 with Lenahan again, demanding that Lenahan cease sending non-compliant and unlawful text  
26 messages on RMG’s behalf, that Lenahan provide to Dowd the OPTIN information Lenahan  
27 used to determine the recipients of his text messages, that Lenahan ensure all of his marketing  
28 efforts were compliant with the CAN-SPAM Act of 2003, and that Lenahan was following best



1 practices with regard to publication of advertisements.

2 26. Lenahan failed to provide to Dowd the OPTIN information and failed to certify to  
3 Dowd that his marketing efforts were compliant with the CAN-SPAM Act of 2003 and in accord  
4 with best practices for publication of advertisements. As a result, Lenahan was officially  
5 suspended as a RMG publisher on or around August 26, 2012.

6 27. Soon after, it came to RMG's attention that EWA was sending text messages,  
7 purportedly pursuant to the Agreement entered into by and between RMG and EWA, which, upon  
8 information and belief, were developed by Lenahan, and which were in violation of the terms and  
9 conditions of the Agreement between RMG and EWA. On or around August 31, 2012, EWA was  
10 officially suspended as a RMG publisher. Additionally, on or around September 21, 2012, Dowd  
11 sent an email to Harrison Gevirtz, a co-founder of EWA, itemizing the specific problems of the  
12 text messages sent by EWA.

13 28. Upon information and belief, EWA learned that Danna was also sending text  
14 messages, purportedly on behalf of RMG, not in compliance with the terms of the Agreement he  
15 entered into with RMG. On or around September 11, 2012, Danna was officially suspended as a  
16 RMG publisher as well.

17 29. As a result of Third-Party Defendants' failure to comply with the terms of the  
18 Agreements and Insertion Orders, none of the Third-Party Defendants were entitled to payment  
19 pursuant to the Payment provision of the Agreements, which states:

20 PUBLISHER will invoice Reach Media Group on a monthly basis at the payout rates  
21 reflected in the Insertion Order. The invoice will reflect delivery of final Qualified Lead  
22 numbers that are based upon numbers reported by Reach Media Group to PUBLISHER  
pursuant to the terms of this Agreement.

23 (Ex. A, ¶ 8.)

24 30. RMG is informed and believes, and thereon alleges, that each of Third-Party  
25 Defendants have engaged in multiple instances of unauthorized advertising through text  
26 messaging. By associating RMG's name with these unauthorized text messages, Third-Party  
27 Defendants have damaged the reputation of RMG, as well as the advertising industry.

28 31. As a result of the Third-Party Defendants' failure to comply with the terms and

1 conditions of the Agreements with RMG, including but not limited to, the sending of  
2 unauthorized text messages. RMG has been forced to absorb the costs associated therewith and  
3 has been unable to charge the Companies for services rendered.

4 **Defamation by Third-Party Defendants Lenahan and EWA**

5 32. After RMG refused to pay Lenahan pursuant to the Agreement on the grounds  
6 that Lenahan did not comply with the terms and conditions of the Agreement, RMG is informed  
7 and believes, and thereon alleges, that Lenahan posted defamatory statements about Dowd and  
8 RMG on the social networking site Facebook. Specifically, on September 28, 2012, an email was  
9 sent from "Ryan Lenahan", at the email address [notification+pfdvclcf@facebookmail.com](mailto:notification+pfdvclcf@facebookmail.com), to  
10 "Internet Advertising – People Who Don't Pay," at the email address  
11 [internetdeadbeats@groups.facebook.com](mailto:internetdeadbeats@groups.facebook.com), entitled "Re: [Internet Advertising – People Who Don't  
12 Pay] Roger Dowd from Reach Media group owes me \$13,000...". The September 28, 2012  
13 email included two comments by an individual named "Ryan Lenahan". The first, posted at  
14 10:19 pm on September 28, 2012, stated:

15  
16 Roger Dowd from Reach Media group owes me \$13,000 and forcing me to hire  
17 Harrison Gevirtz to take them to court. I'm also aware that they owe another  
18 network \$xx,xxx in addition to another affiliate they owe \$xx,xxx. Roger claims  
19 we were using "unapproved" sms content however I have countless emails, skype  
20 transcripts...etc where he told me to use his exact word for word message on my  
21 marketing materials or else risk non payment, which I did under threat and now  
22 hes claiming its unapproved BS story.

23 The second comment was posted at 10:21 pm on September 28, 2012, and stated:

24  
25 Roger Dowd sent a 14k wire to my partner whom was using the very same sms  
26 content, then 3 days later contacted the bank and pretended the wire they sent was  
27 fraud in attempts to get it reversed. Luckily a signed IO, invoice, emails,  
28 transcripts...etc got the bank to realize it was a BS story and stopped the  
fraudulent reversal.

33. RMG is informed and believes, and thereon alleges, that these two comments  
were drafted by Lenahan on a public group Facebook site. The comments accuse Dowd and  
RMG of unjustifiably withholding funds from Lenahan, and they accuse Dowd of fraudulently

Field Code Changed

1 reversing a bank wire. But Lenahan was well aware that neither accusation was true.

2 34. At least one of these postings has already damaged RMG's excellent reputation  
3 with one of its larger clients. In its correspondence with RMG, this client notified RMG that it  
4 had seen the second September 28, 2012 comment and it further indicated to RMG that it would  
5 require a personal guarantee or prepayment in future engagements with RMG.

6 35. Similarly, after RMG refused to pay EWA for publication services it performed  
7 purportedly pursuant to the Agreement on the grounds that EWA breached the terms and  
8 conditions of the Agreement, RMG is informed and believes, and thereon alleges, that one of  
9 EWA's co-founders, Ryan Eagle ("Eagle"), also posted a defamatory comment about Dowd and  
10 RMG on Facebook. Specifically, on September 21, 2012, an email was sent from an individual  
11 named "Ryan Eagle", at the email address [notification+pfdvclcf@facebookmail.com](mailto:notification+pfdvclcf@facebookmail.com), to "Internet  
12 Advertising – People Who Don't Pay," at the email address  
13 [internetdeadbeats@groups.facebook.com](mailto:internetdeadbeats@groups.facebook.com), entitled "[Internet Advertising – People Who Don't  
14 Pay] Roger Dowd – We're having a little flack from...". The September 21, 2012 email included  
15 the following comment, posted at 11:58 a.m.:

16 Roger Dowd – We're having a little flack from him, anyone having any problems?  
17 I heard he was a good guy so I'm a bit surprised.

18 Additionally, RMG is informed and believes, and thereon alleges, that on or around September  
19 21, 2012, Eagle posted the following message on Dowd's personal Facebook page:

20 Hey Roger – We're apparently having some problem with getting paid by you. I  
21 was wondering if you could get that through to us consider you hold such a good  
22 name in the industry. Thanks a lot pal

23 36. These two postings suggest that Dowd unjustifiably withheld funds owed to  
24 EWA. But EWA was well aware that this accusation was not true.

25 37. As a result of the defamatory postings by Lenahan and Eagle, RMG's counsel,  
26 DLA Piper LLP (US), sent cease and desist letters by Federal Express and e-mail to Lenahan and  
27 Eagle on October 15, 2012, demanding that they cease and desist from this conduct and from  
28 engaging in further unlawful conduct directed at Dowd and RMG, and that they confirm their

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1 compliance with these demands in writing to the offices of DLA Piper LLP (US) no later than  
2 Monday, October 22, 2012. RMG's counsel never received confirmations in writing from either  
3 Lenahan or Eagle. Moreover, on November 4, 2012, another email was sent from "Ryan  
4 Lenahan", at the email address [notification+pfdvelecf@facebookmail.com](mailto:notification+pfdvelecf@facebookmail.com), to "Internet  
5 Advertising – People Who Don't Pay," at the email address  
6 [Internetdeadbeats@groups.facebook.com](mailto:Internetdeadbeats@groups.facebook.com), entitled "Re: [Internet Advertising – People Who  
7 Don't Pay] Roger Dowd from Reach Media group owes me \$13,000...". The November 4, 2012  
8 email included another comment by the individual named "Ryan Lenahan" stating "Just an  
9 update, over 3 months have passed and have still not seen a dime." Additionally, the email  
10 included two comments by other individuals to Ryan Lenahan's September 28, 2012 11:19 p.m.  
11 defamatory comment about Dowd and RMG. They said "Good to know, thanks for the heads  
12 up" and "oh my. . . not going near that network". As evidenced by these comments and those of  
13 one of RMG's largest clients, it is evident that Lenahan's defamatory statements about Dowd  
14 and RMG have already injured their reputation in the publishing network and advertising  
15 industries.

#### 16 COUNT I

##### 17 Breach of Warranty Against All Third-Party Defendants

18 38. RMG incorporates by reference Paragraphs 1 through 37 as if fully set forth  
19 herein.

20 39. Third-Party Defendants, and each of them, were obligated to comply with the  
21 Terms and Conditions of the Agreements. Pursuant to the Agreements, Third-Party Defendants,  
22 and each of them, represented and warranted that all their efforts associated with the Agreements  
23 complied with the laws of the United States, and any other laws of any other jurisdictions  
24 applicable to each of them, and that they would not engage in or promote any illegal activities of  
25 any kind in association with the Agreements.

26 40. RMG is informed and believes, and thereon alleges, that Third-Party Defendants,  
27 and each of them, independently breached their warranties to RMG by sending text messages to  
28 cellular phone numbers without the prior express consent of the called parties, in violation of

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1 federal law.

2 41. To the extent Plaintiff and members of the purported Class have suffered any  
3 damage as a result of these text messages, each of the Third-Party Defendants' conduct solely,  
4 actually and proximately caused those damages.

## 5 COUNT II

### 6 Breach of Contract Against All Third-Party Defendants

7 42. RMG incorporates by reference Paragraphs 1 through 41 as if fully set forth  
8 herein.

9 43. Third-Party Defendants, and each of them, were obligated to comply with the  
10 Terms and Conditions of the Agreements. Under the Agreements, each of them were prohibited  
11 from editing RMG's Creatives without RMG's written prior approval.

12 44. RMG is informed and believes, and thereon alleges, that Third-Party Defendants,  
13 and each of them, independently breached this obligation by sending text messages to cellular  
14 phone numbers which language did not comply with RMG's Creatives, although none of the  
15 Third-Party Defendants received RMG's prior written approval for any change to the Creatives.

## 16 COUNT III

### 17 Libel Per Se Against Third-Party Defendants Lenahan

18 45. RMG incorporates by reference Paragraphs 1 through 44 as if fully set forth  
19 herein.

20 46. RMG is informed and believes, and thereon alleges, that Third-Party Defendant  
21 Lenahan published on a Facebook public group page at least two written, false, and unprivileged  
22 comments about Dowd and RMG. Lenahan accused Dowd and RMG of unjustifiably  
23 withholding funds from Lenahan and accused Dowd of fraudulently reversing a bank wire.

24 47. These written statements and communications are defamatory on their face, as  
25 they attack both RMG's and Dowd's business reputations and Dowd's trustworthiness, falsely  
26 indicating that RMG and Dowd have unjustifiably withheld funds in the past in business dealings.  
27 As a result of Lenahan's conduct, RMG's relationship with one of its largest clients has already  
28 deteriorated, and Lenahan's conduct have undermined RMG's strong reputation in the publisher

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cofounder Eagle published on a Facebook public  
group page at least one written, false, and  
unprivileged comment about RMG

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accused RMG of unjustifiably withholding funds  
from EWA

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1 network and advertising industries.

2 48. Unless restrained by order of the court, Third-Party Defendant Lenahan will  
3 continue to wrongfully attempt to harm RMG's and Dowd's strong reputation in the publisher  
4 network and advertising industries, for which damages will not afford adequate relief. Therefore,  
5 RMG seeks injunctive relief, among other relief.

6 **COUNT IV**

7 **Tortious Interference with Contractual Relations Against Third-Party Defendant Lenahan**

8 49. RMG incorporates by reference Paragraphs 1 through 48 as if fully set forth  
9 herein.

10 50. As a leading performance based publisher network, RMG has multiple contractual  
11 relations with customers seeking advertising services, from which RMG draws significant profits.

12 51. Third-Party Defendant Lenahan, a self-proclaimed publication expert, is well  
13 aware of RMG's strong reputation in the advertising industry and the existence of these multiple  
14 contracts.

15 52. RMG is informed and believes, and thereon alleges, that Lenahan intentionally,  
16 purposefully, willfully, and with knowledge sent unauthorized text messages to cellular phone  
17 numbers which did not comply with RMG's Creatives. This conduct was unjustified and was the  
18 moving or procuring cause of the inability to perform on the contract between RMG and  
19 Companies. Lenahan's conduct resulted in damages to RMG, including, but not limited to the  
20 inability to collect payment under the contract with Companies.

21 53. Further, after Lenahan intentionally, purposefully, willfully and with knowledge  
22 sent these unauthorized text messages, Lenahan published on a Facebook public group page false,  
23 unprivileged information about Dowd and RMG, accusing Dowd and RMG of unjustifiably  
24 withholding funds from Lenahan and accusing Dowd of fraudulently reversing a bank wire,  
25 committing libel.

26 54. Not only was it reasonably foreseeable that Lenahan's act of sending unauthorized  
27 text messages to cellular phone numbers which did not comply with RMG's Creatives would  
28 interfere with or disrupt these contractual relations, but Lenahan's wrongful conduct was intended

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1 and designed to interfere with RMG's contractual relations.

2 55. Further, it was reasonably foreseeable that Lenahan's libelous conduct would  
3 interfere with or disrupt these contractual relations, and Lenahan's wrongful conduct was  
4 intended and designed to interfere with RMG's contractual relations. His conduct was grossly  
5 negligent, and as a result, at least one of RMG's contractual relations has already deteriorated.

6 56. Unless restrained by order of the court, Third-Party Defendant Lenahan will  
7 continue to wrongfully attempt to harm RMG's and Dowd's strong reputation in the publisher  
8 network and advertising industries, for which damages will not afford adequate relief. Therefore,  
9 RMG seeks injunctive relief, among other relief.

#### 10 **COUNT V**

#### 11 **Tortious Interference With Prospective Economic Advantage Against Third-Party** 12 **Defendant Lenahan**

13 57. RMG incorporates by reference Paragraphs 1 through 56 as if fully set forth  
14 herein.

15 58. As a leading performance based publisher network, RMG has multiple contractual  
16 relations with customers seeking advertising services, from which RMG draws significant profits.

17 59. Third-Party Defendant Lenahan, a self-proclaimed publication expert, is well  
18 aware of RMG's strong reputation in the advertising industry and the existence of these multiple  
19 contracts.

20 60. RMG is informed and believes, and thereon alleges, that Lenahan knew of and  
21 intended to interfere with RMG's prospective business.

22 61. RMG is informed and believes, and thereon alleges, that Lenahan intentionally,  
23 purposefully, willfully, and with knowledge sent unauthorized text messages to cellular phone  
24 numbers which did not comply with RMG's Creatives. Lenahan's intentional, purposeful, willful,  
25 and with knowledge, sending of unauthorized text messages to cellular phone numbers which did  
26 not comply with RMG's Creatives was unjustified and was the moving or procuring cause of the  
27 inability to perform on the contract between RMG and Companies. Lenahan's conduct resulted in  
28 damages to RMG, including, but not limited to the inability to collect payment under the contract

1 with the Companies.

2 62. Further, Lenahan published on a Facebook public group page false, unprivileged  
3 information about Dowd and RMG, accusing Dowd and RMG of unjustifiably withholding funds  
4 from Lenahan and accusing Dowd of fraudulently reversing a bank wire. Lenahan committed  
5 libel.

6 63. Not only was it reasonably foreseeable that Lenahan's sending of unauthorized  
7 text messages to cellular phone numbers which did not comply with RMG's Creatives and  
8 libelous conduct would interfere with or disrupt these contractual relations, but Lenahan's  
9 wrongful conduct was intended and designed to interfere with RMG's contractual relations and  
10 prospective economic advantage. His conduct was grossly negligent, and as a result, at least one  
11 of RMG's contractual relations has already deteriorated.

12 64. Unless restrained by order of the court, Third-Party Defendants Lenahan will  
13 continue to wrongfully attempt to harm RMG's and Dowd's strong reputation in the publisher  
14 network and advertising industries, for which damages will not afford adequate relief. Therefore,  
15 RMG seeks injunctive relief, among other relief.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, RMG respectfully requests that this Court enter judgment in its favor and against  
18 Third-Party Defendants, and each of them, and that this Court award the following relief to RMG:

- 19 A. A declaratory judgment that Third-Party Defendants, and each of them, breached  
20 their respective Agreements and warranties within those Agreements and should  
21 be held individually liable to RMG for any loss or damage RMG incurs as a result  
22 of Plaintiff's lawsuit;
- 23 B. A declaratory judgment that the breaches of contract and warranty by Third-Party  
24 Defendants, and each of them, were the actual and proximate cause of any injuries  
25 and damages sustained by Plaintiff and other members of the purported Class;
- 26 C. Judgment against Third-Party Defendants compelling them to pay in full to RMG  
27 any loss or damage incurred by RMG as a result of Plaintiff's lawsuit;
- 28

- 1 D. Injunctive relief enjoining Third-Party Defendant Lenahan and Third-Party  
2 Defendant EWA, their principals, agents, servants, employees, successors, and  
3 assigns, from doing any other act or making any other statements tending to, or  
4 likely to result in damage to Third-Party Plaintiff's reputation or business, and  
5 from continuation of these unfair, unlawful, and/or fraudulent business practices.  
6 E. An award to RMG for its attorneys' fees and costs for bringing the Third-Party  
7 Complaint; and  
8 F. Such other or further relief as this Court may deem just and proper.

9 Dated:

10 DLA PIPER LLP (US)

11 By: \_\_\_\_\_  
12 ERIN JANE ILLMAN  
13 VISHALI SINGAL  
14 Attorneys for Defendant  
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